REMARKS

Claims 1-14 and 24-27 are pending in the application. Withdrawn Claims 15-23 have been canceled herein. Claims 1, 2 and 14 are the only independent claims under consideration.

Claim Objections

Claims 2-4 were objected to under 37 CFR 1.75(c) as being of improper dependent form for filing to further limit the subject matter of a previous claim. As kindly suggested by the Examiner, Applicant has amended Claim 2 so as to rewrite the claim in independent form. This is believed to overcome the claim objection and withdrawal of the same is therefore respectfully requested.

Rejections Under 35 USC 103(a)

Claims 1-8, 10-14, 24 and 25 were rejected under 35 USC 103(a) as being unpatentable over US Patent 6,389,473 (Carmel et al.) in view of US Patent 5,920,701 (Miller et al.) and *newly-cited* US Patent 6,560,655 (Grambihler et al.). Claim 9 was rejected as being unpatentable over Carmel in view of Miller and Grambihler in view of US Patent 6,920,110 (Roberts et al.); Claim 26 was rejected as being unpatentable over Carmel in view of Miller and Grambihler in view of US Pub No. 20020083124 (Knox et al.); and Claim 27 was rejected as being unpatentable over Carmel in view of Miller and Grambihler and Knox in view of US Pub No 20050240940 (Quinet et al.) (although the Response to Arguments section (starting on page 20) indicates that the previous arguments of 10/08/09 are 'not persuasive', the previous rejections were withdrawn, and new rejections based upon new art provided -- the reasoning for the "New Ground Rejection" that includes Grambihler in each of the rejections, is found at page 22 of the Action).

In view of the following discussion, each of these rejections is respectfully traversed and reconsideration is requested.

Independent Claim 1 is directed to a method for synchronously transferring an amount of local data from a local data storage medium to a remote data storage medium via a communications link having an available bandwidth, the local data storage medium associated with a local computer system having a local processor sequentially responsive to a plurality of

local computer programs, the remote data storage medium associated with a remote computer system non-redundant of the local computer system and having a remote processor, the method including evaluating local user conditions associated with transfer of the local data, based on the currently available bandwidth and the amount of local data, approximating a transfer time for the local data, determining a status of the local processor, wherein the determining step includes determining if the local processor has reduced activity or is idle, based on the approximated transfer time, the local user conditions, and the status of the local processor, selecting a time *of day at which* to transmit the local data to the remote data storage medium, and automatically arranging transfer of the local data to the remote data storage medium via the communications link at the selected time *of day*.

Independent Claim 14 is an apparatus claim corresponding to method Claim 1 and is directed to an apparatus for synchronously transferring an amount of local data from a local data storage medium to a remote data storage medium...., the apparatus including a computer-readable storage medium and a processor responsive to the computer-readable storage medium and to a computer program, the computer program, when loaded into the processor, operative to perform a method including evaluating local user conditions associated with transfer of the local data, based on the currently available bandwidth and the amount of local data, approximating a transfer time for the local data, determining a status of the local processor, wherein the determining step includes determining if the local processor has reduced activity or is idle, based on the approximated transfer time, the local user conditions, and the status of the local processor, selecting a time *of day at which* to transmit the local data to the remote data storage medium, and automatically arranging transfer of the local data to the remote data storage medium via the communications link at the selected time *of day*.

As explained in paragraph [0005] of Applicants' specification, as filed, a "typical local PC client has a single processor under independent control, and a limited bandwidth communication link to any remote data storage medium" – the "local PC may be unable to concurrently perform multiple processing-intensive tasks, such as transferring large data files and running unrelated user applications, and/or data transfers may be slow".

Applicants' proposed method takes these facts into account, by determining if a local processor is idle or has reduced activity, and using that determination (*in addition to BOTH the*

local user conditions and the *approximated time for transfer*) *to select a time of day at which* to transmit the local data to the remote storage device.

As further explained at paragraph [0029], "the *user may specify conditions* associated with selection of user data 25, such as, among other conditions: where the data is located; file extensions associated with the data; *times, or events, which would trigger transfer of the data*; or any combination thereof…the user may request that user data 25 having file extensions such as .DOC or .JPG be *transferred immediately*, while user data 25 have file extensions such as .MPG or .RM be *transferred overnight*".

Carmel is directed to a method for "*real –time* broadcasting from a transmitting computer to one or more client computers – including 'providing at the transmitting computer a data stream having a given data rate, and dividing the stream into a sequence of *slices*, each slice having a predetermined data size associated therewith".

In Carmel, "data stream 40 comprises a series of data *slices* 42, 44, 46, 48, etc.…each slice contains a segment of video and/or audio data, corresponding to a respective, successive time interval labeled T_1, T_2, T_3, etc." (Col. 7, lines 23-25). In addition "time intervals T_1, T_2, T_3, etc are not all equal, but rather are adjusted by computer 34 in response to the transmission rate" (Col. 7, lines 42-45). These "time intervals" are simply time slots, each of which contain a data slice 42, 44, 46, 48, etc. Although these time intervals T_1, T_2, T_3, etc, may be 'adjusted by computer 34 in response to the transmission rate' (col. 7, lines 35-49, cited in the Action page 7, lines 1-3), Carmel does not teach (or even suggest) a method that "selects ***a time of day*** at which to transmit local data to the remote data storage medium, and automatically arranges transfer of the local data to the remote data storage medium via the communications link at the selected *time of day.*"

In fact, Carmel does not teach, or suggest in any way, a method that, based upon **(1)** the *approximated transfer time*, **(2)** *the local user conditions*, and **(3)** the *status of the local processor*, ***selects a time of day*** at which to transmit the local data to the remote data storage medium, and automatically arranges transfer of the local data to the remote data storage medium via the communications link at the selected time *of day*.

In response to Applicant's previous arguments, the current Office action (page 21) (and also the Final Action (page8)), acknowledges that Carmel does not state the term 'a time of day'

– but takes the position that - a time of day at which "as in real time" is *implicitly taught by Carmel as "stream in real time, col. 2, line 60 to col. 3, line 5"* – and further that Miller teaches this limitation in Fig. 7, and Table 1 in column 7 (see page 22 of Action).

The Action (again, page 21) further states that "Grambihler teaches **a time of day** as Thursday at 11:00 PM (i.e., The synchronization manager 60 may support user-scheduled automatic synchronizations, by providing a schedule dialog and wizard 64 (FIG 2) that include user dialogs for showing and configuring logon synchronization preferences, logoff synchronization preferences, idle synchronization preferences and scheduled synchronizations. By way of example, a particular user may schedule an automatic synchronization of local and remote electronic mail messages on each logon, schedule an automatic synchronization of local files with network databases files every **Thursday at 11:00 PM**, and schedule *a synchronization of subscriptions* during idle times A set of interfaces may also be provided whereby handlers can set up schedules outside of the user interface of the synchronization manager 60, col. 9, lines 34-38) (NEW GROUND OF REJECTION)" .

The exact same quotation is repeated for the "NEW GROUND OF REJECTION" (page 22) stating that "Grambihler teaches selecting a time of day **based on user condition**".

First, Applicants respectfully submit that each of independent Claims 1 and 14 recite: "based on **(1)** the approximated transfer time, **(2)** the local user conditions, and **(3)** the status of the local processor (note that reference numerals **(1)-(3)** are added herein to aid in discussion and are not recited in the claims), selecting *a time of day at which* to transmit the local data to the remote data storage medium, and automatically arranging transfer of the local data to the remote data storage medium via the communications link at the *selected* time of day.".

Based upon ALL 3 of the RECITED ELEMENTS (again -- (1) the approximated transfer time, (2) the local user conditions, and (3) the status of the local processor), a TIME OF DAY IS SELECTED, at which the local data will be TRANSMITTED to the remote data storage medium.

First, with respect to "**(1)** the approximated transfer time, **...** selecting *a time of day at which* to transmit the local data to the remote data storage medium, Applicant submits that

Carmel does not teach or even suggest selecting a time of day (even in 'real time' broadcasting) based upon the approximated transfer time. The "adjustment" of various "time intervals T_1, T_2, T_3, etc", by computer 34 in response to the transmission rate does not provide any teaching of selecting a time of day to transmit data based upon an approximated transfer time.

The Action now relies upon the alleged teachings of Grambihler as providing yet another element not explicitly (or implicitly in Applicant's opinion) taught by Carmel - specifically, 'selecting a time of day at which to transmit local data based upon **"(2)** local user conditions". As detailed in para's [0029]-[0030] of Applicant's specification as filed, a "user may specify conditions associated with selection of user data...such as...where the data is located; file extensions associated with the data; times, or events, which would trigger transfer of the data; or any combination thereof...[f]or example, the user may request that user data 25 having file extensions such as .DOC or .JPG be transferred immediately, while user data 25 have file extensions such as .MPG or .RM be transferred overnight".

Grambihler describes various functions performed by "synchronization manager 60" – including the "synchronization of local files with network database files 'every Thursday at 11:00 PM'" --- even *if* this could somehow be read as describing "evaluating local user *conditions*" – it simply does NOT suggest "*selecting a time of day upon which to TRANSMIT DATA based upon evaluated local user conditions*".

Even IF Grambihler teaches "*synchronizing* subscriptions" - "during idle times; and ""*synchronizing* local files with network database files" – "every Thursday at 11:00PM" --- Grambihler does NOT TEACH OR EVEN SUGGEST selecting a time of day in which local data will be **transmitted** to a remote storage medium, based upon ALL THREE OF THE SPECIFIC ELEMENTS RECITED IN THE CLAIMS --- Grambihler does NOT teach or even suggest selecting a time of day based upon element **(1)** – i.e., "the approximated TRANSFER TIME" -- COMBINED with elements **(2) and (3).**

The Action again directs Applicants to col. 12, line 48-59 of Carmel, which describes how "if link 60 has not completed transmission of file 42 by the time the sixth file is ready for transmission, link 60 will have timed out...link 60 is terminated and is replaced by link 70". This is indicated to read upon Applicant's claimed 'selecting a time of day to transmit local data...based upon **"(3)** the status of the local processor". Applicants submit however, that the

'time-out indication' and subsequent 'replacement of link 60 with link 70', do not, in any way, suggest '*selecting a time of day'* based upon a 'status of the *local processor*'.

Again, Carmel is very specifically directed to '*real-time broadcasting*' (see e.g., col. 1, lines 50-53, "it is an object of the present invention to provide substantially continuous, high-bandwidth data streaming over a network..." – and also, quoted from col. 2, lines 17-21 of Carmel, "the division of the data stream into slices and the inclusion of the slice indices in the data stream...allows the *broadcast* to go on substantially *in real time* without the use of special-purpose hardware").

Grambihler's alleged teachings of 'scheduling synchronizations' does <u>not</u> teach or even suggest evaluating local user conditions in real time and selecting a time of day in which to transmit local data to a remote storage medium.

In addition, the Action (page 9) acknowledges that Carmel and Grambihler do not teach "selecting a time based on bandwidth" and directs Applicant to Miller for such teaching.

With respect to the assertions of the teachings and alleged 'obviousness' to combine such teachings with those of Carmel and Grambihler, Applicant submits that even *if* Miller describes 'scheduling data transmission' from one or more content sources over a network to one or more replicated servers -- it would *not be obvious* to one skilled in the art, in *any way*, to somehow combine such teachings with those of Carmel and Grambihler in the manner suggested in the Action. In fact, again - Carmel very specifically ***teaches away from any such modification/combination of teachings*** – in that Carmel is specifically directed to '<u>REAL-TIME</u> broadcasting.

Applicant submits that the *combined teachings* of Carmel, Grambihler and Miller, fail to teach or suggest selecting a time of day at which to transmit local data to the remote storage medium based on (1) the *approximated transfer time*, (2) the *local user conditions*, and (3) *the status of the local processor*.

For at least the foregoing reasons, Applicants respectfully submit that each of independent Claims 1 and 14 is patentable over the combined teachings of Carmel, Grambihler and Miller.

Dependent Claims 2-13 and 24-27 are also believed to be clearly patentable over the art of record for all of the reasons indicated above with respect to Claim 1, from which they depend, and even further distinguish over the cited references by reciting additional limitations.

Dependent Claim 26 further recites that the local user conditions comprise file extensions of the local data.

The Action relies upon the alleged teachings of Carmel, Miller, Grambihler and Knox to reject Claim 26. On page 17 of the current Action (and page 20 of the Final Action), the Examiner takes the position that "Miller implicitly teaches the file extension as criterion" (to select a time of day at which to transmit local data). As support for this statement, the Examiner recites col. 6, lines 52-59 of Miller, that "the priority level for each content source 12, 14 is assigned based on some criterion…certain content sources 12, 14 may be charged a greater fee by the scheduler…" – Applicant submits that this does not, in any way, implicitly teach 'using a file extension' as criterion. In addition, even *if* Knox describes 'analyzing the content of the uploaded data file' (e.g., a *.rm file indicates a file format compatible with the Real Media file structure) – Knox (like Carmel, Miller and Grambihler), does *not* teach or suggest selecting a time of day at which to transmit local data based upon a local user condition comprising file extensions of the local data. **Applicant respectfully notes that the arguments presented above are repeated from the previous response, filed October 8, 2009 – the Examiner's pending Action, mailed December 28, 2009, failed to address these arguments –clarification as to the rejection and a response to these arguments are therefore requested.**

Claim 27 was rejected as being unpatentable over Carmel in view of Miller and Grambihler and Knox in view of Quinet.

Again, dependent Claim 27 recites that the "local data having a first file extension is transferred immediately and local data having a second file extension is transferred at a later time of day". The Action attempts to arrive at the method defined by Claim 27, by turning to the alleged teachings of Carmel – Miller – Grambihler – Knox AND Quinet, and somehow 'finding' various elements and then *combining* those elements in a manner that would be 'obvious' on one of ordinary skill in the art. Quinet's description of "updating priorities" according to a rule wherein "the file extension looks like HTML" to "ensure that a HTML page requested from the bookmarks or typed in directly will be *requested* with a high priority" – simply does not teach or suggest a method in which a "time of day" is selected based upon local user conditions – the local user conditions being such that 'local data having a first file extension is transferred immediately and local data having a second file extension is transferred at a later time of day'.

This is not taught or suggested by Quinet – by itself or in any combination with Carmel, Miller, Grambihler and Knox. **Again, Applicant respectfully notes that the arguments presented above are repeated from the previous response, filed October 8, 2009 – the Examiner's pending Action, mailed December 28, 2009, failed to address these arguments –clarification as to the rejection and a response to these arguments are therefore requested.**

CONCLUSION

For all of the foregoing reasons, Applicant again respectfully submits that each of the pending claims is patentable over the combined teachings of Carmel, Miller, Grambihler, Knox and Quinet.

Should the Examiner be of the view that an interview would expedite consideration of this Response, or of the application at large, request is made that the Examiner telephone the Applicants' undersigned attorney at (908) 518-7700 in order that any outstanding issues be resolved.

FEES

Authorization is given to charge the one-month extension fee ($130) and any additional fees deemed to be due and owing as a result of this Amendment to the undersigned attorney's PTO Deposit Account No. 50-1047.

Respectfully submitted,

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